

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF &
APPENDIX**

74-2523
FEB 27 1975

10

Vincent Rizzo

v.

U.S.

Brief + Appendix



PAGINATION AS IN ORIGINAL COPY

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPEAL NUMBER 74-2523

Vincent Rizzo)
Appellant,)
)
)
vs.)
)
)
United States of America)
Appellee.)

BRIEF OF THE APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR SOUTHERN DISTRICT OF NEW YORK
D.C. NUMBER - 72 CR 1333 - K.T. DUFFEY, U.S.D.J.

For the Appellee:

Paul J. Curran, Esq.
United States Attorney
Southern District of New York
U.S. Courthouse - Foley Square
New York, New York 10007

For the Appellant:

Vincent Rizzo, Appellant
In Propria Personia
United States Penitentiary
Box PMB - 77336 - 158
Atlanta, Georgia 30315

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RULES AND AUTHORITIES INVOLVED

TITLE 28, UNITED STATES CODE, ANNOTATED, SECTION 2255:

" A prisoner in custody under sentence of a court established by an Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or Laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A Motion for such relief may be made at any time. Unless the Motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of facts and conclusions of law with respect thereto.

If the Court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law, or otherwise open to collateral attack, or that there has been such a denial or infringement of the Constitutional Rights of the prisoner as to render the judgment **vulnerable** to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner, or resentence him or grant him a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the Court of Appeals from the order entered on the motions as from final judgment on application for a writ of habeas corpus. An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied relief unless

it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

RULE 11, FEDERAL RULES OF CRIMINAL PROCEDURE

"A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if a defendant's cooperation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea."

RULE 32(d) FEDERAL RULES OF CRIMINAL PROCEDURE:

"Withdrawal of a plea of not guilty, a Motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea."

TITLE 18, UNITED STATES CODE SECTION 1951

Interference With Commerce By Threats Or Violence:

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts to conspire so to do, or commits or threatens physical violence to any person or property in furtherance to a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section -

(1) The term "Robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of violence or fear of injury, immediate or in the future, to his person or property, or property in his custody or possession, or his person or property of a relative or member of his family or anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any territory or possession of the United States; all commerce between any point in a state, territory, possession, or the District of Columbia and any point outside thereof; all commerce between points within the same state through any place outside such state; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect Section 17, of Title 15, Sections 52, 101-115, 151-166 of Title 29 or Sections 151-188 of Title 45.

PRELIMINARY STATEMENT

This appeal emanates from the denial of a "Motion to Vacate Sentence, Pursuant to Title 28, United States Code, Section 2255" under criminal indictment No. 72 Cr. 1333, in the United States District Court for the Southern District of New York, in the court in October, 1974.

That the Motion was denied by the Honorable Kevin Thomas Duffy, U.S.D.J. on October 18, 1974 under the Docket No. 72 Cr. 1333, stating in his "Endorsement"

"Upon a review of the transcript it is clear that the petitioner's allegation is unfounded. The motion is therefore denied. So ordered, New York, New York, October 18, 1974"

The petitioner/appellant filed a timely notice of appeal, and the application to proceed on appeal in forma pauperis was granted on November 15, 1974. Although through a misconception, the clerk treated the motion as a Motion for a Reduction of Sentence, although the records on appeal will properly reflect that it is a Motion to Vacate Sentence,

pursuant to Title 28, United States Code, Annotated, Section 2255.

It is from this denial of the Motion on October 18, 1974, and the leave to proceed on appeal in Forma Pauperis on November 15, 1974 that this appeal is taken.

STATEMENT OF THE FACTS

The appellant was indicted along with two co-defendants, Phillip Crispino and Patty Marino, in indictment number 72 Cr. 1333 from the United States District Court for the Southern District of New York. Count I charging a conspiracy to violate Title 18, United States Code, Section 894 and 1951. Count II, charges a violation of Title 18, United States Code, Section 894, 891(7) and (2); and Count III, that the appellant plead guilty to, stated as follows:

"From in or about September 1967 up to in or about May, 1972, in the Southern District of New York, Vincent Rizzo, Philip Crispino and Patty Marino, the defendants, did unlawfully and willfully obstruct delay and affect, and attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, and did attempt so to do, by extortion, that is, by the obtaining of money from John Calamaras, with his consent, induced by wrongful use of actual and threatened use of force, violence and fear. (Title 18, United States Code, Section 1951)."

The indictment was given was given to the appellant in the later part of September, 1973, who was not represented by counsel during these initial proceedings before the Honorable Judge Duffy. Judge Duffy asked the appellant if there were any objections to having Henry Chapman, Esq. be appointed to represent him, and with no objections from the appellant, trial was set for commencement in a weeks time. The appellant conferred with appointed counsel, concerning the case, plus two other cases pending against ~~the~~ ^{plaintiff} appellant,

and set for trial. Mr. Chapman expressed his feelings that the petitioner/appellant needed a "wall street lawyer" because of the many hours of research needed for a proper defense. Subsequently, Mr. Chapman was relieved of his obligation as Court-Appointed Counsel for this Indictment and all other charges pending against the appellant.

Mr. Gilbert Epstein, Esq., was appointed in or about the first week of October, 1973 to represent the appellant on all three(3) pending indictments. Only one conference was had between the appellant and Mr. Epstein pertaining to all three(3) indictments pending, this conference lasted approximately one hour. Counsel informed the appellant that he wasn't interested in listening to over 844 days of tapes that appellant claimed would prove his innocence in respect to his intent of any harm to anyone. Appellant told Mr. Epstein, these tapes would prove beyond a doubt the relationship between John Calamaras and appellant was such that nothing within their recorded conversations would reflect anything more than the closest of friendship. Mr. Epstein, then informed the appellant that it would be the smart thing to plead guilty and the judge would probably only give, a few years concurrent with the time already being served.

Further Mr. Aronwald, the Special United States Attorney to this appellant's indictments said that if he was found guilty he would get another indictment charging the appellant as a "Special Offender" that would then call for a life sentence.

ISSUE PRESENTED

DID THE DISTRICT COURT ERR WHEN IT DISMISSED
APPELLANT'S MOTION TO VACATE SENTENCE,
PURSUANT TO 28 UNITED STATES CODE, § 2255?

ARGUMENT

The District Court did err when Judge Duffy dismissed the Motion to Vacate Sentence, pursuant to Title 28 United States Code, Section 2255, in that a reading of the transcript of the proceedings will disclose that the Court failed to comply with Rule II Federal Rules of Criminal Procedure, Title 18.

A close reading of all cases concerning the policy established by the Supreme Court in McCarthy v. United States (1969), 394 U.S. 459, will disclose the guidelines established by the Court makes it pointedly clear that it is the burden of the court to satisfy itself that the plea "is made voluntarily with understanding of the nature of the charges, and the consequence of the plea... The Court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea."

The record in itself is completely devoid of a determination by the Court that the appellant voluntarily and knowingly made the plea of guilty and neither was it established that there was a factual basis for the plea.

The record, as shown on October 9, 1973, at 12:15 P.M. shows the following:

(TR - 1, Line 22-25 - page 3 Line 2-8):

DEFENDANT RIZZO: No, your Honor.

THE COURT : I understand at this point there is to be an application to withdraw a plea of not guilty and enter a plea of guilty by the defendant Rizzo. Is that correct counsel?

MR. EPSTEIN : That is correct your Honor. Mr. Rizzo at this time desires to withdraw his previously entered plea of not guilty and is offering at this time to plead guilty to the third count in the indictment.

THE COURT : Mr. Rizzo are you ready to plead?

DEFENDANT RIZZO : Yes, your Honor.

THE COURT : Do you wish the indictment read, counts 3?

MR. EPSTEIN : Your Honor, on several occasions I have read the particular count involved. I discussed the indictment with Mr. Rizzo and the facts of the case and at this time I would waive the reading of Count 3.

THE COURT : Do you want it read to you, Mr. Rizzo, or do you understand what Count 3 entails?

DEFENDANT RIZZO : It doesn't have to be read to me. I don't contest the indictment at all.

THE COURT : How do you plead, guilty or not guilty?

DEFENDANT RIZZO : Guilty, your Honor.

THE COURT : Before making any findings whatsoever in this case or any other case, it is incumbent upon me to make sure that this plea of guilty, before it can be entered, is voluntary, is made knowingly with a full understanding of the rights and consequences of your plea, so I have to ask you some questions, Mr. Rizzo.

Do you know that if you pleaded not guilty you would be entitled to a speedy and public trial by a judge or a judge and jury? Do you understand that, if you pleaded not guilty?

DEFENDANT RIZZO : I would be entitled to a trial, yes, Your Honor (Emphasis added)

AS STATED in McCarthy, supra:

"... because a guilty plea is an admission of all of the elements of the formal criminal charges, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts".
394 U.S. at 466, 89 S.Ct. at 1171 22 L.Ed at 425
(Emphasis added)

It certainly is not adequate that Mr. Epstein stated: "Your Honor on several occasions I have read the particular count involved. I discussed the indictment with Mr. Rizzo..." His reading of the count and Appellant's knowingly pleading guilty, is not what Rule 11, Federal Rules of Criminal Procedure is all about. For it is not the

question as to whether or not Counsel understands the charge, but that the appellant understands the law in relation to the facts, as can be discerned by the appellant's reply to the Court; as previously quoted; "It doesn't have to be read to me. I don't contest the indictment at all."

In McMann v. Richardson, 397 U.S. 759 (1970), The defendant's were denied hearings on their habeas corpus petitions. The fact that their pleas of guilty were entered on the advice of competent counsel superceded the defendant's allegations of improperly procurred confessions. However, a plea of guilty differs in purpose and effect from a mere admission or an extra judicial confession; it is in itself a conviction. More is not required. The Court has nothing to do but give judgment and sentence. See Kercheval v. United States, 227 U.S. 220 (1927); Therefore, it becomes a conviction; it's validity must be as firmly grounded as any other type of conviction. In Machibroda v. United States, 368 U.S. 487 (1962) The Court determined that in spite of the government's contentions that the petitioner's allegations were improbable and unbelievable, the Court ordered a hearing, largely because of the gravity of the petitioner's claim.

In the instant case, the records and files themselves are deplete of a finding that the plea was made with fully knowledgeable understanding of the nature of the charges.

(TR. 4 Lines 3-6):

"Do you understand what the nature of the charge you are pleading to is sir?

DEFENDANT RIZZO : I understand my role in that your Honor."

Here the appellant is plainly not pleading guilty to the charges in the Indictment, he is merely stating to the Court that he understands his role

in the alleged indictment, and that certainly is not an admission of his complicity in the unlawfully committed acts as charged in the indictment.

(TR. - 5 Line 2-17):

"DEFENDANT RIZZO : No, your Honor.

THE COURT : In fact, did you commit the offense?

DEFENDANT RIZZO : The fact is I know what I did and I was aware of it and that's it. I could only tell your Honor exactly what I did, the way I conducted myself, what my intentions were and that's it.

THE COURT : Tell me what you did.

DEFENDANT RIZZO : Mr. Calamaras, who was my dear friend, I went out of my way to give him as much money and borrow for him as much money as physically possible.

My role in it was the role of getting monies for Mr. Calamaras. Besides my own money, I got him other monies. Interest was paid on monies. The rate of interest, I don't know the law as far as shy-locking is concerned, but interest was paid on this money. It was above the interest of a bank of 8 percent a year or what ever the bank rate is.

Besides being a regular friend, the man was more or less like my father so that was our relationship and we belonged to the same fraternity and I had a certain obligation to our beliefs and that's it.

Now, as far as Mr. Crispino is concerned, he has never given that man any money. I wouldn't allow it. He collected money on my request and so did Patty Marino.

How they collected the money I was unaware of it. I was unaware Mr. Crispino ever threatening this man because I would never allow it and I also unaware of Mr. Marino threatening this man."

As previously quoted from McCarthy, supra.,

"Unless the defendant possesses an understanding of the law in relation to the facts..."

Clearly the appellant's statement here in open court could not possibly lead the Court to assume that he understood the law in relation to the facts especially as outlined in Count 3 of the indictment as previously quoted:

"... the defendants' did unlawfully and willfully obstruct, delay and affect, and attempt to obstruct, delay and affect commerce and the movement of articles and commodities in commerce, and did attempt to do so by extortion..."

(TR. Page 7 - Line 13-15 -- Page 8 Line 2-14):

"As far as Mr. Marino and Mr. Calamaras, as I know it to be, he stressed to him the extreme pressure I was under, being I borrowed this money and I had to pay it back, and things just piled up as far as monies. The day came where I gave out.. I borrowed more than I could pay back and I had.. being he was so close to me, I had to discuss this with him every day he was well. When Mr. Calamaras became sick, I told him that's it. I says, "Your'e unable;" and his son took up the obligation, what ever the obligation was, that's about it. The last time I saw Mr. Calamaras was in St. Vincent's Hospital approximately two weeks before he passed away, and I discussed this with him.

I says, "I have an indictment that claims I forced you."

He says, "My son, don't worry about it."

And I says, "Well I asked my lawyer at the time if it would be proper to get a note or something or some kind of document."

And he says, "It isn't necessary. If Mr. Calamaras lives he comes to court. If he doesn't live you have no case."

As far as the Court being able to interpret this as an understanding of the law in relation to the facts there is no correlation " on the record "

In the United States v. Young, 424 F2d 1276 (the defendant misunderstood the legal requisites necessary to make him liable as a participant in the offense).

In the case of United States v. McGee, 355 U.S. 17, the Court stated that; "The plea may be a voluntary act of a defendant, yet not made with understanding and thus be subject to vacation" See also United States v. Antoine, 434 F2d 450 (2nd Cir. 1970).

A conviction after a plea of guilty normally rests on the defendant's own admission in open Court that he committed the acts for which he is charged. Brady v. United States, 397 U.S. at 748, 25 L.Ed. 2d at 756; McCarthy v. United States, 394 U.S. 459, 466, 22 L.Ed. 2d 418, 425, 89 S.Ct. 1166 (1969). That admission may not be compelled, and since the plea is also a waiver of trial - and unless the applicable law otherwise provides, a waiver of the right to contest the admissibility of any evidence the state might have offered against the defendant - it must be an intelligent act "done with the awareness of the relevant circumstances and likely consequences." Brady v. United States, 397 U.S. at 748, 25 L.Ed. 2d at 756.

CONCLUSION

WHEREFORE, THE DISTRICT COURT ERRED when denying an evidentiary hearing as the "Records and the Files" of the case do not show that the appellant is not entitled to relief, and therefore the appellant Prays that this Court Remand For An Evidentiary Hearing consistent with the holdings of Title 28, U.S.C. § 2255.

Respectfully presented,

Vincent Rizzo
Vincent Rizzo, Appellant

State of Georgia) : ss
County of Fulton)

Sworn to and subscribed before me
This 3 day of February, 1975

William Caw, Jr.
Parole Officer

Parole Officer: Authorized by the Act of
July 7, 1955 to Administer Oaths (18 U.S.C.
4004).

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that I am the appellant in the foregoing Brief of Appellant, and that I have mailed the Original plus three (3) copies of the Brief to the Clerk of the Court, United States Court of Appeals, for the Second Circuit, New York, New York, and one copy to Paul J. Curran, United States Attorney for the Southern District of New York, U.S. Courthouse - Foley Square, New York, New York 10007, by mailing them Certified Mail, Return Receipt Requested on this the 3 day of February, 1975.

Vincent Rizzo

Vincent Rizzo, Appellant.

CERTIFICATE OF SERVICE

I, VINCENT RIZZO, have on this 24th day of February, 1975, placed in the United States Mail four (4) copies of the Criminal Docket, 72 Cr. 1333, and four (4) copies of the District Courts opinion, dated Oct. 23, 1974, of the denial of motion by Judge Duffy.

Mailed to: United States Court of Appeals, Second Circuit, United States Courthouse, Foley Square, New York, New York 10007.

Also; One copy of the above documents is marked for service on the United States Attorney, Paul J. Curran, for the Southern District of New York.

Vincent Rizzo
Vincent Rizzo,
Pria Personia.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 24th DAY OF FEBRUARY, 1975

J.P. Shaggs
Notary Public

Parole Officer: Authorized by the Act of
July 7, 1955 to Administer Oaths (18 U.S.C.
4004).

APPENDIX

1. CRIMINAL DOCKET, 72 CR. 1333 (2 pages)
2. DISTRICT COURT OPINION DATED OCT. 23, 1974, ~~RE~~ JUDGE DUFFY'S DENIAL
OF MOTION (2 pages)

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

JUDGE DUFFY

72 CRIM. 1 333

TITLE OF CASE

THE UNITED STATES

vs.

ATTORNEYS

For U. S.: Special AUSA

264-3930

1) VINCENT RIZZO

2) PHILLIP CRISPINO

3) PATTY MARINO

For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
3 mailed	Clerk				
12-3 mailed /	Marshal				
12-4 Docket	Docket fee				
12-5					
12-6 89% conspiracy to collect extension of credit by extortionate means (ct.1) 12-6 89% (7) and 2, collection extension of credit by extortionate means (ct.2) -					
12-7-72	obstruct commerce by extortion (ct.3)		PROCEEDINGS		
12-7-72	Filed Indictment and ordered sealed - B/W as to all defts.		- Motley, J.		
12-7-72	Indictment ordered unsealed.		- Motley, J.		
12-8-72	P. Crispino - (Atty. present Harold B. Biard) - Bail fixed in the sum \$5,000.00 Deft. remanded in Lieu of bail.		-- Motley, J.		
12-12-72	Crispino-Filed following papers rec'd from Magistrate, docket sheet, appearance bond.				
12-15-72	Crispino-Filed warrant for arrest, executed 12-8-72.				
12-18-72	Rizzo - Court directs entry of not guilty plea (Fugitive) Marino- Court directs entry of not guilty plea		---- MacMahon, J.		
12-23-73	Filed Govt's notice of readiness for trial.				

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DATE	PROCEEDINGS
12-20-72	Vincent Russo - Bail fixed at \$25,000.00 on each of four indictments. -- MacMahon, J.
12-22-72	Philip Crispino- Filed notice of appearance Berel, Navarra & Gullen 674-1440
12-29-72	Rizzo- Filed papers rec'd from Magistrate, docket sheet, appearance bond.
1-8-73	RIZZO- Filed order extending bail limits to Eastern New York-Bryan, J. (filed in 72 cr. 1329)
1-7-73	Rizzo- Filed warrant of arrest on Marshal's return executed 12/1/73
1-6-73	Deft Marino-Bench warrant ordered issued Duffy, J. Deft Rizzo's bail limits extended to district of New Jersey and eastern Dist. of New York. Duffy, J.
1-6-73	Pre-trial conference held before Duffy, J. Jury trial scheduled for 1-6-73
9-13-73	V.RIZZO (Produced on a writ) Atty. H. Chapman will speak with deft and report to Court if he is going to take the assignment. Deft to be produced in Court on 9-17-73. Deft remanded in lieu of bail previously fixed at \$25,000 on each of 4 indictments.....Duffy, J.
1-12-73	P.CRISPINO - Deft waives indictment new information filed. Deft pleads GUILTY to the new information.
1-9-73	VINCENT RIZZO - Produced on writ & atty Gilbert Epstein present, WITHDRAWS plea of not guilty and now pleads guilty to count 3 only. Pre-sentence report ordered. Sentence adjd to date set by Judge Bryan on another indictment. Deft remanded in lieu of bail.....Duffy, J.
1-15-73	V.RIZZO - Filed CJA appointment of counsel Gilbert Epstein, Esq. 253 Bayway NYC
1-26-73	V.RIZZO - Filed letter dtd. 8-21-73 from deft to Judge Duffy.
1-20-73	P.CRISPINO Filed transcript of record of proceedings, dated 9-12-73
1-5-73	V.RIZZO Filed transcript of record of proceedings, dated Oct. 9, 1973
2-5-73	ALI. DEF'TS- Filed transcript of record of proceedings, dated Sept. 12, 1973 /Produced on a writ
1-6-73	VINCENT RIZZO - Filed Judgment(Atty. Gilbert Epstein present) the deft is committed for imprisonment for a period of TWENTY(20)YEARS on Count 3 to run concurrently with the sentence imposed by Judge Gagliardi in indictment number 73 Cr.195 on June 4, 1973 and also to run concurrently with the sentence imposed by Judge Carter in indictment number 72Cr.1330 on June 18, 1973... This sentence will not run concurrently with the sentence imposed by Judge Roberts in New York State Court.....Counts 1 & 2 are dismissed on motion of deft's counsel with consent of the Govt.....BRYAN, J.Docketed 12-7-73.....
1-2-74	VINCENT RIZZO - Filed in 72Cr.672 affdvt. & notice of motion for reduction in sentence... (Sent to Judge Bryan)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Courthouse,
Foley Square
New York, N.Y. 10007

Date Oct. 23 1974

VINCENT RIZZO
BOX 77336-158
ATLANTA, GA. 30315

Title: RIZZO VS U.S.A.

Packet Number: 72 cr. 1333

Decision dated: Oct. 18, 1974

Judge DUFFY

Six:

There is enclosed herewith, copy of decision
filed and entered in the above-entitled proceeding.

Very truly yours,

RAYMOND F. BURGHARDT
Clerk

PAUL J. CURRAN
U.S. ATTORNEY
S.D.N.Y.
U.S. COURTHOUSE, FOLEY SQ.
NEW YORK, N.Y. 10007

by:

Deputy Pro Se Clerk

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ENDORSEMENT

Upon a review of the transcript it is clear that the petitioner's allegation is unfounded. The motion is therefore denied.

So ordered.

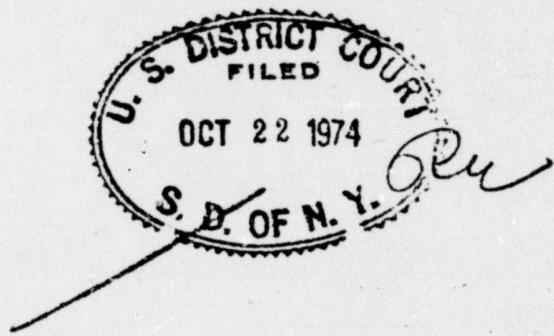
Eric Thomas

U.S.D.J.

New York, New York
October 18, 1974

(20)

Rizzo v. USA



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